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ABSTRACT

The purpose of this guide is to inform Colorado school districts of their responsibilities in providing equal educational opportunities to all students. By following the directions outlined here, a district can comply with state and federal regulations regarding sex discrimination, civil rights discrimination, and the rights of non-English speaking students. (Author/IRT)

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EQUAL EDUCATIONAL OPPORTUNITY A GUIDE FOR THE LOCAL SCHOOL DISTRICT

**CIVIL RIGHTS REGULATIONS
COLORADO REVISED STATUTES 1973
SEX EQUITY: TITLE IX
THE LAU PROGRAM**

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Denver, 1976



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Introduction

Equal Educational Opportunity is viewed as a general concept or a goal toward which to direct our professional efforts. In one sense, it consists of the broad notion of compensatory, alternative, and special education; as well as individually guided instruction and the right to read. In fact, just about everything a school district does to enrich the quality of its education and to extend the enriched educational opportunity to all students can be considered part of the district's attempt to remove inequities in its program. In another sense, it seeks to insure equal educational opportunity for racial and ethnic minorities and females in categories defined by state and federal legislation. While both ideas of Equal Educational Opportunity are valid and principal concerns of the Colorado Department of Education, the purpose of this Guide is to inform school districts of their responsibilities in the latter case, viz., civil rights, the removal of sex discrimination, and tutorial programs for all non-English speaking students.

By following the directions outlined in this Guide a district can comply with current civil rights regulations, Title IX regarding sex discrimination, and the *Lau* Supreme Court decision concerning non-English speaking students enrolled in public schools. It has been prepared by the Community Services Unit, Colorado Department of Education, in response to requests from school districts that have asked such questions as, "What is a good Equal Educational Opportunity program?" "What must a district do in order to comply with state and federal civil rights regulations?" "What kind of assistance is available through the Department of Education?" Each of these questions is answered, as well as many others that have been asked by educators across the State.

The Guide furnishes information that local school administrators need to know about state and federal regulations under the three programs, viz., civil rights, women equity, and *Lau*.

Federal Civil Rights regulations apply to all programs for which federal financial assistance is authorized under laws administered by departments of the Federal Government (Health, Education, and Welfare; Labor; Commerce; Agriculture, etc.). The regulations apply

to money paid, property transferred, and all federal financial assistance under the title, "Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health, Education, and Welfare Effectuation of Title VI of the Civil Rights Act of 1964."

Foreword

For many years, the Colorado Department of Education has been engaged in the pursuit of Equal Educational Opportunity as a legitimate goal of public education. In fact, the Department is committed to the constitutional mandate of providing, within the range of its authority, equal educational opportunity for all students in the public schools of Colorado.

Racial and cultural isolation, economic deprivation, sex discrimination, and a variety of social "isms" are among the basic causes of educational inequities. While these factors will not account for all the variations in local educational programs across the State, they exert a significant influence on both the quality and equality of educational opportunity.

This guide for providing equal educational opportunity is designed to inform school districts of their responsibility under State and Federal regulations, with specific reference to:

1. Colorado Revised Statutes, 22-1-103,104
2. Civil Rights Act of 1964, as amended
3. Educational Amendments of 1972
 - a. Ethnic Heritage Program, Title IX, ESEA
 - b. Indian Education, Title IV
 - c. Emergency School Aid Act, Title VII
 - d. Prohibition of Sex Discrimination, Title IX
4. Educational Amendments of 1974 (P.L. 93-380)
 - a. Equal Educational Opportunities, Title II, Section 408
 - b. Consolidation of Certain Educational Programs, Title IV



Compliance Requirements

The compliance requirements listed below are quoted and paraphrased from regulations cited in *Federal Registers*, the Civil Rights Act of 1964 (as amended), Educational Amendments of 1972 and 1974. While the language of regulations tends to be prescriptive, all civil rights regulations seek to encourage voluntary compliance with the law and support affirmative actions by those subject to the law to overcome the effects of prior discrimination and isolation. On the basis of annual reports, observations on site, and the amount of community involvement, it is estimated that approximately 85 percent of the 181 school districts in Colorado have achieved an acceptable level of compliance. The remaining 15 percent could benefit from observing the following Civil Rights regulations.

1. Recipients of federal funds shall keep records and have available for the proper officials * racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs. (*"Proper official" is defined by the Department of Health, Education and Welfare to be the federal, state, or local official responsible for administration and monitoring of the federally-assisted program and officials of the Office for Civil Rights, whose responsibilities include monitoring the recipient's compliance with civil rights regulations.)
2. Recipients shall permit access to its records, accounts, and other sources of information pertinent to compliance reviews and investigations, by the responsible official, during normal business hours. Access to district's data and information is not in conflict with the "open records" law. Also, individuals' rights and privacy, as defined in "Educational Amendments of 1974" (P.L. 93-380), shall be protected.
3. Recipients of federally-assisted grants shall make information available to participants and beneficiaries to inform them of their protection against discrimination on the basis of race, color, national origin, and sex.

4. The categories for identifying racial and ethnic groups have been agreed upon by the following federal agencies:
- a. Office for Civil Rights (OCR)
 - b. Equal Employment Opportunity Commission (EEOC)
 - c. General Accounting Office (GAO)
 - d. The Office of Management and Budget (OMB)

The categories do not denote scientific definitions based on anthropology. They are social groupings based on subjective determinations and voluntary admissions. In reporting racial and ethnic data, an individual is counted *only once* in any of the five categories below according to the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging.

American Indian or Alaskan Native — A person having origins in any of the original people of North America.

Asian or Pacific Islander — A person having origins in any of the original people of the Far East, Southeast Asia, or the Pacific Islanders. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.

Black, not of Hispanic Origin — A person having origins in any of the black racial groups.

Hispanic — A person of Mexican, Puerto Rican, Cuban Central or South American, or other Spanish Culture or origin, regardless of race. Such persons may be Black or White or any racial combination.

White, not of Hispanic Origin — A person having origins in any of the original people of Europe, North Africa, the Middle East, or the Indian subcontinent.

This set of "five mutually exclusive and exhaustive" categories represents the minimum number of categories to be used. Under some circumstances, the Office for Civil Rights may require a school system to maintain and report data about subgroups within one or more of the five basic categories. If state and local agencies have need of further detailed information apart from Office for Civil Rights requirements, they are encouraged to subdivide the categories, so long

as the data can be recombined into the basic five categories. As an illustration, the Hispanic category might be subdivided into sub-categories for Mexican, Puerto Ricans, and other Hispanics.

General Provisions of Colorado Revised Statutes of 1973, C.R.S., 22-1-104(2), states that . . . "the history and civil government of the United States: including the history, culture, and contributions of minorities, including but not limited to the Spanish Americans and American Negroes. shall be taught in all the public schools of the State."

STATE BOARD OF EDUCATION (POLICY STATEMENTS)

1. Equal Educational Opportunity (Policy No. 1402) states that, "The State Board of Education pledges to utilize its authority to the maximum in assuring equal educational opportunity to all Colorado children and to assist local boards of education to further such endeavors in their respective districts." (Adopted 11-6-75) Local school districts can be assisted in the development of local equal educational opportunity programs by the Department's Office of Field Services, especially the Community Services Unit, author of this publication.
2. The Board's Affirmative Action Commitment (Policy No. 1403) states the following:

"To promote equal opportunity in the entire educational process, the Board endorses an Affirmative Action Policy for the utilization within the Department of Education, Boards of Cooperative Services, and in Colorado's local school districts. The Colorado State Board of Education, in adopting an *Affirmative Action Policy*, commits itself to supporting equality of employment opportunity for all persons regardless of racial or ethnic background, religion, sex, or national origin."

Further, the Board specifies that appropriate effort will be made to recruit, train and promote in such a way that individuals from ethnic groups and women will be given opportunity to gain greater representation at all levels of employment. (Statement of Policy are excerpts from official Affirmative Action Plan approved July 8, 1974. Above policy statement adopted November 6, 1975.)



Sex Equity - Title IX

Title IX states: "No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance."

It emphasizes a commitment of public education to a concept that is central to our democratic way of life, viz., the individual's right to choose and a recognition of individual human potential.

WHAT ARE THE IMMEDIATE NEEDS TO COMPLY WITH TITLE IX?

1. Each school district must conduct a self-evaluation by July 21, 1976 (see Title IX Regulations No. 86.3-c). Such regulations specify the following:
 - a. Evaluate current educational and employment practices against Title IX regulations;
 - b. Discover, modify, and remedy any practices not in compliance according to the time schedule stated in the regulations;
 - c. Documentation of compliance changes made in programs and practices must be kept on file for three years to be available upon request by the U.S. Office for Civil Rights.
2. Each district must designate a responsible employee to take charge of implementation and adopt a grievance procedure (see regulations No. 86.8).
 - a. At least one employee must be appointed to coordinate compliance efforts;
 - b. The name, office address, and telephone number of the compliance official must be distributed to all students and employees; and,

- c. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any violation of Title IX.
3. Each district must disseminate its policy (see Regulation No. 86.9).
- a. Notify interested parties (including applicants for employment, elementary and secondary students and their parents, unions or professional organizations holding collective bargaining or professional agreements) that the district does not discriminate on the basis of sex in its educational programs and activities;
 - b. Initial notification of the district's policy should have been made by October 19, 1975, but *continuing* notification must be made through:
 - local newspapers, student newspapers, handbooks for students or teachers, and other written materials distributed to students and employees.
4. Assurance of compliance with Title IX regulations must be sent with application for federal financial assistance.

Title IX covers the treatment of students in all programs and activities and the employment of all employees, credentialed and classified, full or part-time.

WHEN MUST EDUCATIONAL PROGRAMS BE IN COMPLIANCE WITH TITLE IX REGULATIONS?

All educational programs must be in compliance with Title IX regulations by July 21, 1976, with the exception of a three-year grace period to bring the secondary physical education and athletic program into total compliance. It is important during this period, however, to be able to show progress toward compliance and to demonstrate comparable programs for both sexes. All steps must be completed by July 21, 1978.

WHAT REGULATIONS DIRECTLY RELATE TO ELEMENTARY/ SECONDARY PUBLIC SCHOOLS?

Subparts D and E of Title IX regulations seem to have the most significance for public elementary and secondary schools.

1. Subpart D deals with sex discrimination against students in educational programs.
2. Subpart E deals with discrimination against school employees.

SUBPART D (SEE REGULATIONS NO. 86.36 to NO. 86.42, INCLUSIVE)

"No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational, training, or other educational program or activity operated by the recipient which receives or benefits from federal financial assistance."

Areas pertinent for public schools for grades K-12 are:

1. *Rules of Behavior and Appearance*

School districts may not "subject any person (on the basis of sex) to separate or different rules of behavior," nor may it "discriminate against any person (on the basis of sex) in the application of any rules of appearance." These sections do not invalidate school rules for student behavior and appearance. They do, however, require such rules to be applied equally to students of both sexes. For example, rules limiting length of boys' hair are prohibited if there is no equivalent limit for girls, as are rules forbidding girls to wear jeans or pants if there is no equivalent rule for boys. Dress and hair regulations are unconstitutional unless they serve legitimate health and/or safety reasons and are applied equally to both sexes.

2. *Physical Facilities*

Certain facilities, such as toilet, locker room, and shower facilities, may be provided on a separate basis but should be of comparable quality.

3. *Access to Course Offerings*

No educational programs, activities, or courses may be segregated by sex. Consequently, no course or activity may be required of one sex but not the other. Sex may not be used as the basis for refusing a student participation in any activity or program. Such courses as health, physical education, industrial, business, vocational, technical, home economics, music, and adult education are specifically mentioned.

4. *A Few Exceptions*

- a. Physical education may group pupils according to sex during participation in contact sports.
- b. Classes may be grouped according to sex during lessons on human sexuality.
- c. A chorus of predominantly one sex is valid if membership requirements are based on quality or range of skill development.
- d. Physical education grouping according to ability may result in predominantly one sex classes.

5. *Physical Education*

Physical education must be coeducational, except during participation in contact sports. This may require changes in teaching methods and in scheduling. Some classes and activities may group pupils according to objective performance and standards; however, identical standards must be used for both sexes. For example, swimming instructors are free to separate students into beginning, intermediate and advanced classes as long as objective criteria are applied impartially (variety of strokes mastered, speed, endurance, lifesaving skills, etc.). The use of a single standard of progress and grading which has "an adverse effect on members of one sex" is not allowed, under item 86.34-d of Title IX regulations. Doing 100 sit-ups and 25 pull-ups, bench press 100

pounds, and running the half-mile in 3½ minutes to earn an A, may effectively discriminate. Therefore, individual progress requirements are appropriate and acceptable.

6. *Counseling and Testing Materials*

- a. Any sex discrimination in guidance or admissions counseling is a violation of Title IX.
- b. Testing materials which are different for each sex are prohibited.
- c. Internal procedures must be developed and utilized to assure that counseling and materials do not discriminate on the basis of sex.
- d. If a disproportionate number of male or female students is found in particular courses or groupings, the causes should be traced to see if it is a result of counseling procedures, interest inventories, or other tests. If the disproportionate group is truly voluntary, maintain documents to support this fact.

7. *Marital or Parental Status of Students*

- a. Schools are prohibited from treating males and females differently in any matter pertaining to the students' family or marital status.
- b. No student shall be excluded or discriminated against, either in class or extracurricular activities, because of pregnancy or a pregnancy-related condition. Consequently, a pregnant student may remain in school as long as she and her physician deem appropriate. A district may require a physician's certification that the pregnant student is physically and emotionally able to continue the normal school program only if the school requires a similar medical certification from students with other temporary physical disabilities requiring medical attention. Pregnancy-related absence from school should be treated as any other temporary disability and thus, eligible for homebound instruction. Likewise, hospital or medical

policy carried by the district for student disability must treat pregnancy or pregnancy-related matters as any other temporary disability.

8. *Athletics*

Includes athletic activities other than physical education, clubs, intramural, and inter-scholastic athletics. Contact sports may involve a single sexually-segregated team in a given activity and may restrict try-outs and team membership to one sex without sponsoring a second team in the same sport resulting in an all-male football team or an all-female field hockey team. Sexually-segregated teams for noncontact sports are permissible if equal teams are sponsored for both males and females in a given activity and if membership on both teams is based on competitive skill.

The school must consider the extent to which the male and female sports, carrying the same name do, in fact, offer equal athletic opportunities, particularly noncontact sports which involve multiple events. Separate male/female intramural volleyball teams would be in compliance if treated equally. Separate male/female gymnastics teams are acceptable only if the same activities are available to both teams. Schools sponsoring only one team in a given noncontact sport must permit students of both sexes to try out for that team on an equal basis; for example, prospective members of a school's only golf team must be selected solely on the basis of objective golf standards.

Basic Principles to Judge Equality of Opportunity in athletics are:

- a. Effective accommodation of both sexes' interests and abilities through athletic opportunities offered,
- b. Provision of equipment and supplies,
- c. Scheduling of games and practice times,
- d. Availability and quality of coaching,
- e. Assignment and compensation of coaches,

- f. Provision of locker rooms, practice and competitive facilities,
- g. Medical and training facilities and services,
- h. Publicity,
- i. Equal aggregated expenditures are not required,
- j. Textbooks are not covered; however, within the guidelines of Title IX, materials and textbooks will become a most important issue.

9. *Employment Practices*

Schoolboards and administrators should examine their policies regarding hiring and pay, including fringe benefits, as well as the marital or parental status of teachers, and the treatment of pregnant employees. No personnel decisions, ranging from recruitment through hiring, pay, and advancement, may differentiate school employees and applicants on the basis of sex, unless sex can be shown to be a *bona fide* occupational qualification.

Most schools are probably not guilty of overt sex discrimination. However, more subtle but equally important forms of discrimination may be present. The following questions should be answered:

- a. Do women coaches receive same pay as men coaches for approximately the same work?
- b. Is there discrimination in appointment of department heads?
- c. Is discrimination evident in appointments to administrative positions in proportion to general teaching population?
- d. Is discrimination evident in employment of part-time para-professional personnel?
- e. Are fringe benefits provided to school employees discriminatory?

Section 86.56-b(2) of the regulations states that schools are prohibited from participating in fringe benefit plans which do not provide either for equal periodic benefits for members of each sex or for equal contributions to the plan by such recipient for members of each sex.

10. *Pregnancy as a Temporary Disability*

Pregnancy must be treated as a temporary disability in the same way that illnesses or injuries are treated in regard to leave policies, compensation, tenure, promotional opportunities, or any other right or privilege of employment. School board policies related to temporary disabilities must be applied equally with regard to physician's certification, leaves, and return to position.

It is our responsibility to avail ourselves of the facts about the Title IX regulations and to become aware of actual and unconscious discrimination we often practice toward other persons. It is our responsibility to renew our commitment to serving every person in our educational programs regardless of sex, race, religious, or ethnic background.

The Lau Program

(A Tutorial Program For Non-English Speaking Students)

On January 21, 1974, the Supreme Court of the United States decided Case No. 72-6520, which was titled "Lau et al v. Nichols et al." This case concerned a Chinese pupil in the San Francisco school system named Kinney Kinmon Lau, a minor by and through Mrs. Kam Wai Lau, his guardian, versus Alan H. Nichols, school official. Excerpts from the syllabus are as follows:

"The failure of the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English denies them a meaningful opportunity to participate in the public educational program and thus violates section 601 of the Civil Rights Act of 1964, which bans discrimination based on 'race, color or national origin,' in 'any program or activity receiving federal financial assistance,' and the implementing regulations of the Department of Health, Education and Welfare. This class suit brought by non-English speaking Chinese students against officials responsible for the operation of the San Francisco Unified School District seeks relief against the unequal educational opportunities which are alleged to violate the Fourteenth Amendment. *No specific remedy is urged upon us.* Teaching English to the students of Chinese ancestry who do not speak English is one choice. Giving instructions to this group in Chinese is another. *There may be others.* Petitioner asks only that the Board of Education be directed to apply its expertise to the problem and rectify the situation."

This Supreme Court decision became the law of the land in January, 1974, after a decision had been reached by the court justices. Colorado public schools operate under state law that deals in part with issues of the Lau decision. Colorado law states as follows:



1973, 22-1-103 (C.R.S. 1963, 123-21-3) — Policy of state to instruct in English — exceptions — Instruction in the common branches of study in the public schools of this state shall be conducted principally through the medium of the English language; except that it shall be the policy of the state also to encourage the school districts of the state to develop bilingual skills and to assist pupils whose experience is largely in a language other than English to make an effective transition to English, with the least possible interference in other learning activities.

In 1975 House Bill No. 1295, the Bilingual and Bicultural Education Act, included Section 22-24-119. This section, titled "Tutorial grant program for the instruction of pupils with limited English language skills," is as follows:

1. In addition to the other provisions of this article, beginning July 1, 1975, districts are eligible to apply for grants, on an annual basis, from the State Board of Education to provide tutorial programs for children enrolled in the schools of the district who are identified under Title VI of the "United States Civil Rights Act of 1964" as those who speak only a language other than English.
2. The State Board of Education shall promulgate rules and guidelines for the implementation of this section. The Department of Education shall review all applications for grants under this program and shall approve an application for such a grant only if it determines that:
 - a. The school district has a comprehensive plan for a tutorial program designed to effectively remedy the English language deficiencies of children identified;
 - b. The tutorial program plan includes an accountability component which identifies the needs of the children with English language deficiencies, defines measurable objectives for such children, and evaluates the progress of such children toward the defined objectives; and,

3. The State Board of Education shall report annually to the General Assembly on all approved grants. Such report shall include the number of children served, the number of teachers or teacher aides employed exclusively to remedy English language deficiencies (or that portion of the activities of teachers or teacher aides which is exclusively attributable to the remedying of English language deficiencies), and the extent to which the special language needs of children identified are being met.
4. Funds received pursuant to this section may be expended by districts for the employment of teachers or teacher aides for that portion of their activities which is exclusively attributable to providing tutorial assistance to non-English speaking pupils. Districts may also expend such funds for the reasonable costs of teacher aide training and instructional materials which are directly related to the tutorial programs established by this section. *No funds appropriated to implement the provisions of this section shall be used to teach children any language other than English.*
5. Beginning July 1, 1975, each district for which a tutorial program is approved by the Department of Education shall be entitled to receive a special tutorial grant for each child identified and enrolled in the tutorial program.

The state laws cited facilitate the provision of programs for non-English speaking pupils. In order for a district to receive a tutorial grant under this program, it must execute the following:

1. Conduct an assessment of all pupils in the district regarding their level of English speaking ability;
2. Submit a comprehensive tutorial plan to the Department of Education for funds to be used toward implementing a program to improve the level of English speaking ability; and,

3. Report to the State Board of Education the number of teachers and teacher aides employed, the number of children served, and the extent to which special language needs are being met.

The observation of teachers and other school personnel of pupil communication with their peer group members in the classroom, on the playground, and in activities are valid methods to use. Teacher-made vocabulary lists both in English and other languages have been used to differentiate between lower and upper grade level vocabulary needs. Some instruments that have been used are:

1. James Language Dominance Test
2. Bilingual Syntax Measure
3. Test for Auditory Comprehension
4. Peace Corps Oral Proficiency Interview
5. Peabody Picture Vocabulary Test (adapted to different languages)
6. Houghton Mifflin -- List of 469 most-used English words.

Assessment of English Speaking Ability

The U.S. Office of Education has established a five-level continuum of English language proficiency. The continuum is designed to identify five overlapping levels of English speaking proficiency that is inclusive of both non-English and monolingual English pupils. The district must assess the degree of linguistic ability of public school pupils in order to place them in one of the following categories:

1. Monolingual speaker of a language other than English (speaks a language other than English exclusively))
2. Predominantly speaks a language other than English (speaks mostly the other language, but speaks some English)

3. Speaks two (or more) languages with equal ease (bilingual proficiency in English and another language)
4. Predominantly speaks English (speaks mostly English but able to understand and speak another language)
5. Monolingual speaker of English (exclusively)

Some districts have used various means to identify levels of language proficiency for all students. The most common practice is to identify the language of the student's parents and the extent to which the language is spoken in the home. A student's primary or home language is other than English if it meets at least one of the following conditions:

1. The language first acquired by the student is other than English.
2. The language most often spoken by the student is other than English.
3. The language most often spoken in the student's home is other than English.

Characteristics of a Good Lau Program

The Community Service Unit of the Colorado Department of Education will assist school districts to develop and implement tutorial programs for non-English speaking pupils in any one of over thirty different languages. In a statewide survey during the fall of 1975, it was found that over fifty-four (54) different languages are spoken in Colorado and of that number thirty-four (34) are by families who are monolingual in a language other than English. Consequently, a directory of multilingual resource persons has been developed for reference by local educational agencies.

The characteristics of a good Lau program which meets the requirements of the U.S. Supreme Court decision (*Lau vs. Nichols*) shall consist of the following:

1. A clear description of the diagnostic measures used to assess the degree of linguistic ability or English fluency;

2. The maintenance of pupil records which show their placement on the fluency continuum and their progress toward improved English speaking ability;
3. The use of teaching styles and methods that satisfy the cognitive and affective learning needs of non-English speaking pupils;
4. Non-English speakers and those with severe language limitation receive their instruction according to their linguistic ability as decided in the Court decision;
5. An information dissemination plan to familiarize staff, parents, and students with different language development programs, i.e.; (a) English as a Second Language, (b) High Intensive Language Training, (c) Bilingual-Bicultural Education, and (d) Multilingual-Multicultural Education; and,
6. Community involvement.

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